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14 JUN 2007

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In re Application of
SEEDS et al.

Serial No.: 10/538,713

PCT No.: PCT/GB03/05428

Int. Filing Date: 12 December 2003

Priority Date: 13 December 2002

Attorney's Docket No.: KLB-002

For: AN OPTICAL COMMUNICATION
SYSTEM FOR WIRELESS RADIO SIGNALS

DECISION ON

PETITION TO

WITHDRAW HOLDING OF

ABANDONMENT

This is a decision on applicants' "Petition to Withdraw Holding of Abandonment under 37 CFR 1.181, filed on 22 January 2007 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 10 June 2005, within the thirty month period, applicant filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371 with, *inter alia*, the requisite basic national fee. Applicant also filed six separate declarations, pursuant to PCT Rule 4.17. Each declaration identified a single inventor and was executed by that inventor, rather than identifying all inventors listed in the published International application.

On 27 March 2006, a decision on the declarations was mailed indicating that the declarations did not identify all the inventors, were unacceptable and thus, did not meet the requirements of 37 CFR 1.497(a) and (b). A newly executed declaration was required.

On 05 April 2006, a Notification of Missing Requirements was mailed to applicant relying on the decision mailed on 27 March 2006.

On 06 June 2006, applicant submitted newly executed declarations along with the \$130 surcharge for filing the declarations after the thirty month period. On 31 August 2006, a Decision on Submission regarding the declarations was mailed to applicant. Applicant was given two months from the mail date of the decision within which to respond.

On 08 January 2007, a Notification of Abandonment was mailed to applicant indicating that "applicant had failed to properly respond to Decision on Submission" dated 31 August 2006.

On 22 January 2007, applicant filed the instant petition to withdraw the holding of abandonment under 37 CFR 1.181.

DISCUSSION

In order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. As set forth in the Official Gazette at 1156 OG 53, the petition must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). No petition fee is required.

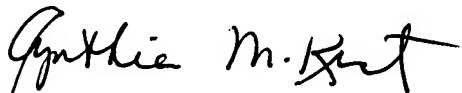
Applicant has satisfied Items (1), (2) and (3) above with the statement that the Decision on Submission dated 31 August 2006 was not received, that a review of the file jacket and docket record book was completed and submission of a copy of the docket record where the non-received Office action would have been entered had it been received (that is, the docket record for 30 September 2006). Counsel has provided his docket record and explanation, showing all responses docketed for the USPTO mail date of 30 September 2006 showing that there was no record of a USPTO mailing for the present application. Thus, applicant has provided the proper showing necessary to withdraw the holding of abandonment and the petition may be properly granted at this time.

A review of the executed declarations submitted on 22 January 2007 indicates that they are in compliance with 37 CFR 1.497(a) and (b) and are acceptable. It is noted that the declaration executed by inventor Matthew Webster does not identify the city and either the state or foreign country of residence of the inventor and is required. The inventor's residence information may be provided on either an Application Data Sheet or a supplemental oath or declaration.

CONCLUSION

Applicant's petition under 37 CFR 1.181 to request to withdraw holding of abandonment is **GRANTED**.

The application will be forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is 22 January 2007.



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